Supreme Court, U. S.
FILED
AUG 18 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-169

OMAHA TRIBE OF INDIANS, ET AL., *Petitioners,*

v.

WILLIAM A. PETERS, ET AL., *Respondents.*

Brief of

Bad River Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Bishop Indian Tribal Council; Confederated Tribes and Bands of the Yakima Indian Nation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation; Covelo Indian Community of the Round Valley Reservation; Forest County Potawatomi Community of Wisconsin, Inc.; Hoh River Indian Tribe; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Lac Du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Lower Elwha Tribal Community; Lummi Indian Tribe; Makah Indian Tribe; Metlakatla Indian Community; Muckleshoot Indian Tribe; Nisqually Indian Tribe; Nooksack Indian Tribe; Oneida Tribe of Indians of Wisconsin, Inc.; Owens Valley Paiute Shoshone Band of Indians; Port Gamble Band of Clallam Indians; Puyallup Indian Tribe; Quechan Tribe; Quileute Indian Tribe; Quinault Indian Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Sauk-Suiattle Indian Tribe; Shoalwater Indian Tribe; Sokaogon Chippewa Community of Wisconsin, Inc.; Squaxin Island Indian Tribe; St. Croix Chippewa Indians of Wisconsin; Stockbridge-Munsee Community of Wisconsin, Inc.; Suquamish Indian Tribe; Swinomish Tribal Community; Tulalip Tribes of Washington; and Wisconsin Winnebago Tribe, As Amici Curiae in Support of the Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

(List of Counsel for Amici Curiae on Page 2 of Cover)

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

JAMES F. KING, JR.
CALIFORNIA INDIAN LEGAL SERVICES
P.O. Box 488
Ukiah, California 95482
Telephone: (707) 462-3825

HARWOOD BANNISTER
Mt. Vernon, Washington

LEWIS BELL
Everett, Washington

JOHN CLINEBELL
Tacoma, Washington

JOHN K. HOERSTER
HOUGER, GARVEY & SCHUBERT
Seattle, Washington

JAMES HOVIS
HOVIS, COCKRILL & ROY
Yakima, Washington

DOUGLAS NASH
Portland, Oregon

FRED NOLAND
Seattle, Washington

ROBERT R. PIRTLE
ZIONTZ, PIRTLE, MORISSET, ERNSTOFF
& CHESTNUT
Seattle, Washington

ALAN C. STAY
SMALL TRIBES OF WESTERN WASHINGTON
Sumner, Washington

SIDNEY J. STRONG
HALVERSON, STRONG, MOEN & CHEMNICK
Seattle, Washington

PETER J. SFERRAZZA
JOHN M. WILEY
WISCONSIN JUDICARE, INC.
Wausau, Wisconsin

MICHAEL TAYLOR
Taholah, Washington

Attorneys for Amici Curiae

TABLE OF CONTENTS

	Page
INTERESTS OF AMICI CURIAE	2
REASONS FOR ALLOWING THE WRIT	4
I. INTRODUCTION	4
II. ARGUMENT	5
A. Review Is Necessary Because of the Uncertainty That Now Exists Over the Power of States To Tax On-Reservation Indians Under Public Law 280	5
B. Unless Reviewed, the Decision Below Will Have an Adverse, Widespread and Long-Lasting Impact Upon Tribal Economic Development and Self-Determination	10
III. CONCLUSION	14

TABLE OF AUTHORITIES

CASES:

Bryan v. *Itasca County, Minnesota*, — Minn. —, 228 N.W.2d 249 (1975), *petition for certiorari filed*, July 7, 1975 (No. 7505027)	9
Cherokee Nation v. *Georgia*, 30 U.S. (5 Pet.) 1 (1831)	14
Confederated Tribes of Colville Reservation, Lummi Indian Tribe and Makah Indian Tribe v. *State of Washington*, Civ. No. 74-3868 (E.D. Wash.) (3 judge court)	8
County of Humboldt v. *Pearson*, Action No. 52040 (Superior Court of Cal., County of Humboldt, August 24, 1972)	6
McClanahan v. *Arizona Tax Comm'n.*, 411 U.S. 164 (1973)	3, 5, 14
Omaha Tribe of Indians v. *Peters*, — F.2d — (8th Cir. 1975)	2, 7, 10, 15
Quileute Indian Tribe, et al. v. *State of Washington*, Civ. No. 74-761S (W.D. Wash.)	8
Rice v. *Olson*, 324 U.S. 786 (1945)	14

	Page
Tonasket v. *State of Washington*, 84 Wash.2d 164, 525 P.2d 744 (1974), *appeal dismissed*, 43 U.S.L.W. 3450 (1975)	7
Warren Trading Post Co. v. *Arizona Tax Comm'n.*, 380 U.S. 685 (1965)	3
Wildcat v. *Adamany*, Civ. No. 74-C-226 (W.D. Wisc.)	9
STATUTES:	
18 U.S.C. § 1162, Public Law 83-280, 67 Stat. 588	*passim*
25 U.S.C. § 450a(b) (Indian Self-Determination and Education Assistance Act)	2
25 U.S.C. § 1451, Public Law 93-262, 88 Stat. 77 (Indian Financing Act of April 12, 1974)	10, 11
28 U.S.C. § 1360, Public Law 83-280, 67 Stat. 588	*passim*
18 Cal. Admin. Code, Req. § 17071(p)	6
Cal. Revenue and Tax Code § 5521	6
Cal. Revenue and Tax Code § 17041	6
LEGISLATIVE HISTORY:	
House Report No. 93-907 (to accompany H.R. 6371) 93rd Cong. 2d Sess. (March 13, 1974)	11
2 U.S. Code Cong. & Admin. News 2874 (1974)	11
MISCELLANEOUS:	
55 I.D. 14 (1934)	4
Cohen, F., *Handbook of Federal Indian Law* (University of New Mexico Reprint 1941)	4
Department of Motor Vehicles Manual § 2.140 (Supp. #39, Aug. 16, 1974)	6
Letter of May 1, 1970 from J. Kenneth McManigal, Tax Counsel, State Board of Equalization, to Office of the Solicitor, U.S. Department of the Interior	6
Letter of April 1, 1975 from Ted E. Barbera, Assistant Attorney General, to the Oregon Department of Revenue	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-169

OMAHA TRIBE OF INDIANS, ET AL., *Petitioners,*

v.

WILLIAM A. PETERS, ET AL., *Respondents.*

Brief of
Bad River Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Bishop Indian Tribal Council; Confederated Tribes and Bands of the Yakima Indian Nation; Confederated Tribes of the Colville Reservation; Confederated Tribes of the Umatilla Indian Reservation; Covelo Indian Community of the Round Valley Reservation; Forest County Potawatomi Community of Wisconsin, Inc.; Hoh River Indian Tribe; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Lac Du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Lower Elwha Tribal Community; Lummi Indian Tribe; Makah Indian Tribe; Metlakatla Indian Community; Muckleshoot Indian Tribe; Nisqually Indian Tribe; Nooksack Indian Tribe; Oneida Tribe of Indians of Wisconsin, Inc.; Owens Valley Paiute Shoshone Band of Indians; Port Gamble Band of Clallam Indians; Puyallup Indian Tribe; Quechan Tribe; Quileute Indian Tribe; Quinault Indian Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Inc.; Sauk-Suiattle Indian Tribe; Shoalwater Indian Tribe; Sokaogon Chippewa Community of Wisconsin, Inc.; Squaxin Island Indian Tribe; St. Croix Chippewa Indians of Wisconsin; Stockbridge-Munsee Community of Wisconsin, Inc.; Suquamish Indian Tribe; Swinomish Tribal Community; Tulalip Tribes of Washington; and Wisconsin Winnebago Tribe, As Amici Curiae in Support of the Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

CONSENT TO FILING OF BRIEF AMICI CURIAE

The consent of the attorneys representing both petitioners and respondents in this action to the filing of this brief *amici curiae* in support of the petition for writ of certiorari has been obtained.

INTERESTS OF AMICI CURIAE

Each of the *amici curiae* is an Indian tribe or tribal organization located in a state affected by the Act of August 15, 1953, commonly known as "Public Law 280."[1]

The Eighth Circuit Court of Appeals held below that Congress, by enacting P.L. 280, "exercised its constitutional power to allow Nebraska to impose taxes upon the income of reservation Indians earned on the reservation." *Omaha Tribe of Indians* v. *Peters*, — F.2d—(8th Cir. 1975) slip opinion p. 8. While this decision is technically controlling only upon the lower federal courts within the Eighth Circuit, it most certainly will have a direct and immediate impact upon reservations and tribes in all P.L. 280 states, for *Omaha Tribe* is the first decision of a federal appellate court squarely upholding the power of states to tax under P.L. 280.

Congress has recently confirmed "its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people."[2] Similarly, this Court in 1973 reiterated that "from the very first days of our Gov-

[1] P.L. 83-280, 67 Stat. 588; codified at 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

[2] Act of January 4, 1975, P.L. 93-638, 88 Stat. 2203, 25 U.S.C. § 450a(b) ("Indian Self-Determination and Education Assistance Act").

ernment, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference."[3] Accordingly, the interest of each of the Indian tribes which have joined in this brief is the preservation of their historical independence from state control, taxation and regulation, the maintenance of their trust relationship with the United States, and the nurturing of their own internal sovereignty and economic independence.

By joining in this *amicus* brief, the respective tribes —located within the States of Alaska, Washington, Oregon, California and Wisconsin—not only seek to advance their own interests as tribes, but also seek to protect the rights of their enrolled members who, as the following discussion will show, are being subjected to chaotic and conflicting state schemes for the taxation of reservation Indians.

Space limits do not permit each of the *amici* to set forth with particularity each instance in which a state has attempted to tax tribal activities or tribal members. Suffice to say that most, if not all, of the *amici* are attempting at present to achieve a measure of political and economic independence by establishing and operating on-reservation tribal enterprises. These enterprises provide employment for tribal members on Indian reservations, and—if they are to be successful—require that the status of their immunity from state taxation be clarified. Additionally, the imposition of state income and other taxes on reservation Indians diminishes or destroys the ability of tribal governments to levy their own taxes, thus preventing them from

[3] *McClanahan* v. *Arizona Tax Comm'n.*, 411 U.S. 164, 170 (1973), quoting from *Warren Trading Post Co.* v. *Arizona Tax Comm'n.*, 380 U.S. 685, 686-687 (1965).

generating the revenue necessary for successfully carrying out their own regulatory programs,[4] and discouraging the development of on-reservation business enterprises. If *amici* are to have any chance to raise the standard of living for their constituent members, a speedy recognition of the Indian tax immunity is essential.

Accordingly, each of the *amici* are affected—directly and adversely—by the Eighth Circuit's decision in this case.

STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in the Petition for Writ of Certiorari.

REASONS FOR ALLOWING THE WRIT

I.

Introduction

The narrow question presented by the Petition is whether, by enacting P.L. 280, Congress conferred upon Nebraska the jurisdiction necessary to tax incomes earned by enrolled tribal members within the boundaries of reservations in the State. *Amici* do not seek, by submission of this brief, to address themselves to the merits of the issue before the Court, since the Petition filed by the Omaha Tribe contains a well-reasoned analysis of the relevant law and legislative history. Rather, in urging this Court to grant the writ, they propose to show the confusion that now exists over state power, under P.L. 280, to tax on-reservation Indians; and to emphasize the direct and far-reaching

[4] Tribes have the power to tax property within reservation limits. 55 I.D. 14, 46 (1934); F. Cohen, *Handbook of Federal Indian Law* 266 (1941); University of New Mexico reprint).

importance of the instant litigation to all Indian tribes and their constitutent members, both now and in the years to come.

II.

ARGUMENT

A. Review Is Necessary Because of the Uncertainty that Now Exists Over the Power of States To Tax On-Reservation Indians Under Public Law 280.

This Court has never defined the effect, if any, of P.L. 280 upon the power of states to impose taxes upon reservation Indians. That question was reserved specifically in *McClanahan* v. *Arizona Tax Comm'n., supra.*[5]

Thus, nearly every state affected by the Act takes the position that P.L. 280 constitutes a general Congressional grant of taxing power over on-reservation Indians. And because this Court has never demarcated the limits of state jurisdiction conferred by P.L. 280, the states and their subdivisions differ significantly in setting limits upon their own taxing authority as assertedly derived from the Statute. While *amici* cannot now present to the Court a comprehensive catalog of all kinds of taxes being levied under the aegis of P.L. 280, they hope to highlight—by example—the confusion that now reigns among the states.

California has not promulgated a comprehensive policy respecting its P.L. 280 taxing power. Rather, tax questions have been settled by a variety of agencies on an *ad-hoc* basis. California generally imposes its personal income tax upon Indians who live and work within reservation boundaries, but exempts

[5] 411 U.S. at 178, footnote 18.

from taxation income directly derived from utilization of lands held in trust by the United States.[6] The State also imposes a head-day tax on the "privilege of grazing or tending livestock," but exempts Indian livestock grazed upon trust land within reservation boundaries.[7] Likewise, business inventories owned by Indians who operate on-reservation retail establishments are exempted from taxation,[8] and Indian-owned businesses located on trust land within California reservations are not required to collect the State's sales tax.[9] Finally, Indian-owned mobile homes located upon reservations are not subject to registration or vehicle license fees.[10]

Oregon construes its taxing power under P.L. 280 as more encompassing than does California. The Ore-

[6] Cal. Rev. & Tax. Code § 17041; 18 Cal. Admin. Code, Reg. § 17071(p).

[7] Cal. Rev. & Tax. Code § 5521. By letter dated August 6, 1973 from John H. Knowles, Tax Counsel, State Board of Equalization, to the Mendocino County Assessor, the Board ruled that Indian-owned cattle grazed on trust land could not be taxed.

[8] *County of Humboldt* v. *Pearson, Action* No. 52040 (Superior Court of Cal., County of Humboldt, August 24, 1972). The Court dismissed an action by the County to collect a business inventory tax from an Indian business located on the Hoopa Valley Reservation. The dismissal was not appealed. The business inventory tax is authorized by Cal. Rev. & Tax. Code §§ 201, 219.

[9] Letter of May 1, 1970 from J. Kenneth McManigal, Tax Counsel, State Board of Equalization, to Office of the Solicitor, U. S. Department of the Interior. The exemption from sales does not appear limited to sales between Indians.

[10] Department of Motor Vehicles, Manual § 2.140, *et seq.* (Supp. #39, August 16, 1974). The regulation does not distinguish between trust and fee land, so long as the trailer is Indian-owned and located within a reservation.

gon Attorney General, relying on *Omaha Tribe, supra,* has ruled that the State is entitled to levy its personal income tax upon incomes of Indians of the Umatilla Reservation which are "derived from sources within [its] boundaries."[11] However, the ruling fails to distinguish in any way between incomes earned from on-reservation employment, and incomes derived from the utilization of trust lands (e.g., income from sale of cattle).

Washington State—in contrast to California and Oregon—conceives its authority to tax reservation Indians and tribes to be virtually without limitation. Shortly after the rendition by that State's Supreme Court of a judgment in *Tonasket* v. *State of Washington* ("*Tonasket II*"), 84 Wash. 2d 164, 525 P.2d 744 (1974), appeal dismissed 43 U.S. Law Week 3450 (1975), the Department of Revenue promulgated Revenue Rule 192. *Tonasket II* reaffirmed Washington's power to tax cigarette sales, but limited the power to situations where the sales are to non-Indians and do not exceed two cartons. Despite the *Tonasket* Court's observation that the case did not involve a tax upon "trust lands, personalty, inventory, gross receipts, or income,"[12] and despite the limited character of its holding, Rule 192 is a sweeping attempt at maximizing the tax liabilities of on-reservation tribes and Indians.

Rule 192 divides Washington's reservations into two categories. Type I (non-plenary) reservations are those over which the State claims only a limited juris-

[11] Letter of April 1, 1975, from Ted E. Barbera, Assistant Attorney General, to the Oregon Department of Revenue.

[12] 525 P. 2d at 754. Washington does not have a personal income tax.

diction under P.L. 280, which clearly does not include the power to tax. Type II (plenary) reservations are those over which the State claims the full extent of jurisdiction permitted by P.L. 280. Rule 192 imposes a "business and occupations tax" upon Indian-owned businesses on Type II reservations, and even on Type I reservations unless the Indians conduct business "on their own land." The Rule also imposes a tax upon the sale of "tangible personal property to Indians whether by Indians or others," except (a) where the seller makes delivery to a point within a Type I (non-plenary) reservation, and (b) where the Indian buyer is not a member of a tribe occupying a Type II (plenary) reservation. Sales to non-Indians are taxed on both Type I and Type II reservations. Finally, Rule 192 allows a tax upon the "use of tangible personal property" on both Type I and Type II reservations, excepting only the use of personalty by Indians from Type I reservations.

Accordingly, revenues originating on Washington reservations are now threatened by a broad and confusing state tax scheme, which misconstrues the jurisdictional import of P.L. 280, attempts to tax the activities and non-trust properties of *tribes*[13] (as opposed to individual Indians), and makes no exception for personal property directly used in the development or economic utilization of trust land.[14] The State even

[13] P.L. 280 only purports by its own terms to confer jurisdiction over "Indians," and does not mention "tribes."

[14] Several actions are pending which broadly challenge Washington's taxation of Indians and tribes. *Confederated Tribes of the Colville Reservation, Lummi Indian Tribe and Makah Indian Tribe* v. *State of Washington*, Civ. No. 74-3868 (E.D. Wash.) (3 judge court); *Quileute Indian Tribe, et al.* v. *State of Washington*, No. C74-761S (W.D. Wash., 1974).

goes so far as to attempt the taxation of building materials located on reservations and being used by tribes for the construction of low-income housing under the HUD "Turnkey" program. Washington's tax scheme thus contrasts with the California approach, which generally excepts from taxation such property and income as is directly connected to or resulting from the use of trust lands, and which does not even attempt to reach tribally-owned assets.[15]

Wisconsin imposes an income tax upon on-reservation Indian incomes, a sales tax upon on-reservation sales by Indians, and a tax upon Indian-owned personalty located within reservation boundaries.[16] In contrast to California, Minnesota imposes a personal property tax upon on-reservation Indian mobile homes,[17] and upon conventional homes affixed to trust land.

In this summary of state tax activities, *amici* have sought to show how chaotic the field of Indian taxation is in P.L. 280 states. They find it difficult to believe that Congress could have intended such a haphazard and rag-tag result through its reference in the Act to civil laws "of general application to private persons or private property."

Should this Court review the judgment of the Eighth Circuit in the instant case (as *amici* hope it will), its decision inevitably will settle many doubts which have

[15] *Amici*, by pointing out these distinctions, do not concede that California has the power to tax incomes of any kind earned by on-reservation Indians.

[16] The legality of the Wisconsin on-reservation income tax is under challenge in *Wildcat* v. *Adamany*, No. 74-C-226 (W.D. Wisc.).

[17] *Bryan* v. *Itasca County, Minnesota*, — Minn. —, 228 N.W. 2d 249 (1975), petition for certiorari filed July 7, 1975 (No. 75-5027).

arisen, since enactment of P.L. 280, over the power of states to tax a wide variety of on-reservation Indian activities and properties. If the Court holds that P.L. 280 was not intended to confer upon the affected states a taxing authority greater than that already existing prior to its enactment, all reservations in P.L. 280 states will, of necessity, be exempt from state tax laws except those authorized by federal laws other than P.L. 280.

If, on the other hand, this Court denies review, the decision below will stand as the only authority at the federal appellate level dealing with the tax implications of P.L. 280. Inevitably, *Omaha Tribe* will be seen by the states as a *carte blanche* to continue and increase dramatically their Indian taxation. *Amici* fear that new and chaotic state tax rulings and lower court decisions will follow upon the Eighth Circuit's judgment in *Omaha Tribe,* and will impose upon them the burden and expense of protecting their immunity from taxation through constant litigation. It is therefore in the public interest and in the interest of the tribes in all P.L. 280 states that the quesions presented by the instant case be resolved by the United States Supreme Court.

B. Unless Reviewed, the Decision Below Will Have an Adverse, Widespread and Long-Lasting Impact Upon Tribal Economic Development and Self-Determination.

It is difficult for the tribes who have joined in this brief as friends of the Court to express fully their consternation with the Eighth Circuit's decision in *Omaha Tribe.* As stated by the House Committee on Interior and Insular Affairs in its report on the Indian Financing Act of 1974,[18]

[18] Act of April 12, 1974, P.L. 93-262, 88 Stat. 77.

> One of the most serious problems on the Indian reservations is the inadequate availability of financial resources to permit the Indian people to develop their own resources and potential. All the traditional indicators of economic levels place Indians and Indian reservations at the bottom of the scale. On every reservation today, there is almost a total lack of an economic community. If the long-sought goal of Indian self-sufficiency is to be reached, such financial assistance must be provided or facilitated.[19]

The decision below, in allowing on-reservation income taxation, and in encouraging states to levy other forms of taxation upon tribes, Indians, and Indian enterprises, raises a new and formidable hurdle to the accomplishment of the goal so recently enunciated by Congress in the Indian Financing Act: "to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources . . . ,"[20] for it now appears that an ever-growing percentage of funds appropriated by Congress for Indian businesses will be sidetracked into the coffers of state taxing authorities.

For the first time, many of the *amici* are operating business enterprises designed to take advantage of the natural resources at their disposal, and thereby to raise the standard of living of their constituent members.

[19] H. Rep. No. 93-907 (to accompany H.R. 6371), 93rd Cong., 2d Sess. (March 13, 1974), 2 U.S. Code Cong. & Admin. News 2874 (1974).

[20] §2, Indian Financing Act of 1974.

For example, several tribes in Washington are now operating modern fish processing plants which provide employment to low-income Indians and which promise —but for the threat of increased state taxation—to allow for a measure of tribal economic growth and self-determination. The Bishop Indian Tribal Council operates a tribal crafts store on the Bishop Reservation in California. The Quechan Tribe of the Fort Yuma Reservation, located on the Colorado River, owns and runs a hydroponic tomato farm. The Confederated Tribes of the Colville Reservation own and operate a supermarket called The Trading Post, the purpose of which is to provide food to reservation Indians at the lowest possible cost.[21] The St. Croix Chippewa tribe owns and operates the Black Dirt Corporation, an on-reservation construction enterprise.[22] A number of tribes are attempting to capitalize upon the remote and beautiful locations of their reservations by establishing tribally-owned resorts.

In addition to tribally owned and operated businesses, individual Indians are running on-reservation businesses which, to the extent that they are taxed by the states, are hindered in providing employment to tribal members.

Many reservations have within their boundaries federally-funded projects which also provide employment

[21] Washington is attempting to impose its business and occupations tax on this tribally-owned enterprise, which is located on trust land. In addition, the State seeks to levy its sales tax on sales by The Trading Post to Indians.

[22] Wisconsin has levied a personal property tax on the construction machinery owned by Black Dirt Corporation, even though it is used solely on the reservation.

to tribal members, thereby raising the standard of living for the entire reservation populations. The Round Valley Reservation in California, for example, is constructing an Indian health clinic with Hill-Burton funds which will employ members of the Covelo Indian Community on the Reservation. The Bureau of Indian Affairs frequently has on-reservation facilities employing Indians. Many reservations have obtained, or are applying for, federal housing monies for tribally-operated housing authorities which will employ reservation Indians.

Tribes, as independent political entities, have the power to levy their own taxes upon on-reservation incomes and businesses.[23] To the extent that states are empowered to tax these same enterprises, the tribal taxing power is destroyed *pro tanto*. A dual system of taxation is not a political reality, for it will discourage the location of new businesses upon Indian reservations. If tribes are ever to exercise their inherent powers of self-government, they must be free to control taxation within their boundaries, and to use tax revenues for their own governmental purposes. The decision below paves the way for state strangulation of tribal sovereignty through taxation. Unless *amici* are freed from attempts by the states to tax their enterprises and members, they will be reduced to little

[23] For example, the Quileute, Makah and Lummi Tribes derive substantial revenues from the levy of a business and occupations tax. The Quinault Indian Nation levies a tax upon the privilege of purchasing clams from tribal members, and the revenues from this tax are used to pay for a tribal program of fish and game control. Tribes organized under the Wheeler-Howard Act of 1934 (48 Stat. 984) generally have their taxing authority set forth in a constitution approved by the Secretary of the Interior.

more than social clubs—mere vestigial remnants of the "domestic dependent nations" that they were once regarded.[24] This result was not envisioned by Congress when it enacted P.L. 280.

III.

CONCLUSION

Amici sincerely fear that the decision below will be seen by the states and their local subdivisions as a strong precedent authorizing the invasion of on-reservation Indian resources, and the destruction through aggressive taxation of tribal powers of self-government. As beneficiaries of the special relationship existing between the United States and the Indian tribes, they believe that they are entitled to a definitive opinion from this Court as to the import of P.L. 280 on state taxation within Indian country. As this Court recognized in *McClanahan, supra,* "the policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history."[25] The states must be told where the limits to their taxing power lie if that policy is to have any concrete meaning. Continued uncertainty in the field of Indian taxation surely will frustrate the growth of tribal independence and economic stability which the *amici* fervently wish to promote.

---

[24] *Cherokee Nation* v. *Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831).

[25] 411 U.S. at 168; quoting from *Rice* v. *Olson*, 324 U.S. 786, 789 (1945).

For these reasons, *amici* pray that this Court allow the writ and review the decision of the Eighth Circuit in *Omaha Tribe of Indians* v. *Peters*.

Dated: August 18, 1975.

Respectfully submitted,

JAMES F. KING, JR.
California Indian Legal Services

HARWOOD BANNISTER

LEWIS BELL

JOHN CLINEBELL
Tacoma, Washington

JOHN K. HOERSTER
Hougen, Garvey & Schubert

JAMES HOVIS
Hovis, Cockrill & Roy

DOUGLAS NASH

FRED NOLAND

ROBERT R. PIRTLE
Ziontz, Pirtle, Morisset, Ernstoff & Chestnut

ALAN C. STAY
Small Tribes of Western Washington

SIDNEY J. STRONG
Halverson, Strong, Moen & Chemnick

PETER J. SFERRAZZA
JOHN M. WILEY
Wisconsin Judicare, Inc.

MICHAEL TAYLOR

Attorneys for Amici Curiae